

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.301.131,) ON PROPOSED AMENDMENT
24.301.138, 24.301.142, 24.301.146,) AND ADOPTION
24.301.154, 24.301.171, 24.301.172,)
24.301.173, 24.301.208, 24.301.301,)
24.301.602, 24.301.710, 24.301.714,)
24.301.717, 24.301.718, and 24.301.719,)
and the proposed adoption of NEW)
RULE I pertaining to building codes)

TO: All Concerned Persons

1. On November 1, 2006, at 10:00 a.m., a public hearing will be held in room B-07, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., October 25, 2006, to advise us of the nature of the accommodation that you need. Please contact Jim McGimpsey, 301 S. Park Avenue, P.O. Box 200517, Helena, Montana 59620-0517; telephone (406) 841-2009; facsimile (406) 841-2050; TTD (406) 841-0532; Montana Relay 1-800-253-4091; e-mail JMcGimpsey@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: A majority of the proposed changes in this rulemaking notice relate to updating the International Building Code (IBC) from the 2003 edition to the 2006 edition. The IBC is updated every three years, and takes into account new building materials and construction techniques. Each new edition also incorporates advances in safety standards pertinent to building construction. Montana's building code officials have historically updated the state's adopted code to correspond with the periodic changes to model building codes. Although the department incorporates by reference the IBC, it is modified by administrative rule to better suit Montana's unique construction requirements, to address issues not otherwise covered by the IBC, or to conform the IBC and related codes to specific requirements of Montana law.

The department also proposes to incorporate by reference other model codes, such as the International Residential Code (IRC), International Mechanical Code (IMC), International Fuel Gas Code (IFGC), International Existing Building Code (IEBC), Uniform Plumbing Code (UPC), National Fire Protection Association Standard (NFPA), American Society of Mechanical Engineers (ASME) Safety Codes for Elevators, Escalators, Platform Lifts, and Stairway Chairlifts, and the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code.

Accordingly, the department concludes that there is reasonable necessity to amend these rules in order to maintain the public health, safety, and welfare by adopting, incorporating, and using the most recent editions of building regulations adopted by the department. Except where otherwise noted, this general statement of reasonable necessity is applicable to all rule actions proposed below. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule. In addition, punctuation, earmarking, and citation of statutes and administrative rules are being amended throughout to comply with ARM formatting requirements.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.301.131 INCORPORATION BY REFERENCE OF INTERNATIONAL BUILDING CODE (1) The Department of Labor and Industry, referred to as the department in this rule and all subsequent rules in ARM Title 24, chapter 301, adopts and incorporates by reference the International Building Code, ~~2003~~ 2006 Edition, referred to as the International Building Code or IBC, unless another edition is specifically stated, together with Appendix Chapter C (Group U - Agricultural Buildings).

(2) The IBC is a nationally recognized model code setting forth minimum standards and requirements for building design, construction, alteration, and repair. The IBC also provides a framework for program administration.

(3) remains the same.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

24.301.138 CALCULATION OF FEES (1) ~~IBC~~ International Building Code (IBC) Section 108.2, Schedule of Building Permit Fees, is modified for use by the department with the following additions:

(a) Permit fees. The fee for each building permit is established in Table 108.2.

(b) Plan review fees. When submittal documents are required, a plan review fee must be paid in addition to the building permit fee. The plan review fee is 35 percent of the building permit fee as established in Table 108.2. If only plan review services are provided, the plan review fee for such services shall be 50 percent of the combined plan review and building permit fee.

(c) and (2) remain the same.

(3) The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees is the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems, and any other permanent equipment.

(4) through (c) remain the same.

(d) When in unusual circumstances the valuation calculated by the use of the "Building Valuation Data" table, the design professional's estimated project cost, firm bids, or contract amounts are determined to be unreasonable for the nature of the project, the department reserves the right to base the building permit fee and plan review fee on the best valuation information it has available to it.

(5) and (6) remain the same.

(7) For projects involving replacement of existing building components, such as roof coverings, siding, and windows, the department may use the requested inspection fee rate in calculating and assessing an appropriate and reasonable fee for projects in which such factors as material costs cause the plan review ~~and~~ building permit fee to exceed the cost of the service the department provides.

(8) and Table 108.2 remain the same.

AUTH: 50-60-104, 50-60-203, MCA

IMP: 50-60-103, 50-60-104, 50-60-203, MCA

REASON: It is reasonably necessary to amend this rule and lessen customer confusion by clarifying which of several possible permit types is being specifically referenced. It is necessary to amend (7) to allow department inspectors to calculate inspection fees on projects where existing siding is replaced using the actual costs of the inspection, in lieu of using fees in table 108.2. The department concluded that it is more commensurate with the actual costs of this type of inspection and more equitable to the customer to calculate fees for siding replacement inspections in this manner.

24.301.142 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE
APPLICABLE ONLY TO THE DEPARTMENT'S CODE ENFORCEMENT
PROGRAM (1) remains the same.

(2) The department will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution in lieu of Section 113 of the International Building Code. When a person fails to submit required plans, obtain a permit, correct plans, or comply with an order of the department, the department, as authorized by 50-60-109, MCA, may bring civil action to enjoin the person from constructing or using the building.

(3) No plumbing, mechanical, or electrical permit will be issued for a building or structure under the jurisdiction of the department, until:

(a) through (6) remain the same.

(7) Subsection ~~440.3~~ 110.2 of the International Building Code is amended to read:

(a) "~~440.3~~ 110.2 Certificate of Occupancy issued. If the building official or his the building official's agent makes all the inspections of a building or structure required by Section 109, and finds it was constructed in accordance with the provisions of the state building code, the building official shall issue a certificate of occupancy, as referenced in 50-60-107, MCA, which shall contain the following:

(i) through (9) remain the same.

(10) Delete Chapter 32 in its entirety.

AUTH: 50-60-203, MCA

IMP: 50-60-107, 50-60-108, 50-60-109, 50-60-203, 50-60-212, MCA

REASON: It is reasonable and necessary to amend (7) to correct a typographical error to an incorrect subsection of the IBC. It is necessary to add (10) and delete chapter 32 of the IBC from the adoption for state jurisdiction. The provisions in chapter 32 govern structure encroachment into the public right-of-way and such situations are typically handled by local zoning departments. It is therefore not state-enforced and is unnecessary for adoption by the department.

24.301.146 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE TO BOTH THE DEPARTMENT'S AND LOCAL GOVERNMENT CODE ENFORCEMENT PROGRAMS (1) through (6) remain the same.

(7) Subsection 105.1.1 is deleted and replaced with the following: "At the discretion of the building official, a single annual permit may be issued for multiple buildings owned by a single entity, located in a single geographic location, which require similar and repetitive repair, restoration, and maintenance work."

(8) and (9) remain the same.

(a) Subsection 312.1 is amended by addition of the following paragraph: "Riding arenas limited to occupant loads of 200 or less and used for boarding, breeding, and training of horses, horse shows and competitions, clinics and rider instruction, and open riding are considered agricultural buildings subject to the provisions of Appendix Chapter C, as amended. Uses such as rodeos, barn dances, craft and other non-livestock shows, conventions, and similar events which result in large numbers of spectators or occupants are not allowed in riding arenas classified as agricultural buildings."

(b) through (d) remain the same.

(10) In new or existing structures, the building official may allow the installation of noncode compliant equipment, facilities, or structural elements including, but not limited to, fire-extinguishing (sprinkler) systems or fire-resistive construction, which are not required by the building code, upon the finding that such installation does not negatively impact the overall compliance of the structure with the building code. Subsection 901.2, Fire Protection Systems, is modified by deleting the exception and replacing with the following: "Any fire protection system or portion thereof not required by this code shall be permitted to be installed for partial or complete protection at the discretion of the building official."

(11) Subsection 903.3.5, Inadequate Water Supply, is amended by addition of the following: "This subsection shall apply to buildings which are required by the International Building Code to be provided with an automatic fire extinguishing system and do not have access to an existing multiple user water supply system, such as a municipal water supply system or a private community water supply system, capable of providing the water supply requirements of National Fire Protection Association Standard for the Installation of Sprinkler Systems, ~~1999~~ 2002 Edition (NFPA 13). Under such circumstances, water storage requirements may be modified by the building official. The modified design shall include sufficient storage on-site to operate 50 percent of the hydraulically remote area for the response time of the local fire department. This reduction shall not reduce the number of operating

sprinklers to less than four. Response time is the time from alarm to the time the fire department can apply water to the fire. Response time shall be established by the use of the formula $T = 0.65 + 1.7D$, where T is response time, in minutes, and D is distance, in miles, from the fire station to the building. The modified water supply shall be sufficient to operate the system for the response time calculated above but not be less than 20 minutes. Water supply requirements shall be established by using the area/density method as defined in NFPA 13. A 50 percent reduction in water storage is allowed. Density shall not be modified. All automatic fire sprinkler system designs and components shall be in storage for 50 percent of the sprinkler discharge requirements in compliance with NFPA 13. When a modified water storage is allowed, the automatic fire sprinkler system must be equipped with a flow alarm, digital alarm communicator transmitter, and a fire department connection. The automatic fire sprinkler system shall be monitored by an approved central station in accordance with NFPA 72, National Fire Alarm Code, ~~1999~~ 2002 edition."

(12) through (13) 3. remain the same.

"4. "The requirements for automatic sprinkler systems for R-4 occupancies are found in ARM 24.301.146~~(36)~~."

(14) remains the same.

(15) Subsection ~~1016.4~~ 1017.1 is amended by addition of the following:

"Upgrading of corridors in existing E occupancies serving an occupant load of 30 or more, may have walls and ceilings of not less than one-hour fire-resistive construction as required by this code. Existing walls surfaced with wood lathe and plaster in good condition or 1/2-inch gypsum wallboard or openings with fixed wired glass set in steel frames are permitted for corridor walls and ceilings and occupancy separations when approved. Doors opening into such corridors shall be protected by 20-minute fire assemblies or solid wood doors not less than 1 3/4 inches (45 mm) thick. Where the existing frame will not accommodate the 1 3/4-inch-thick door, a 1 3/8-inch-thick solid bonded wood-core door or equivalent insulated steel door shall be permitted. Doors shall be self-closing or automatic closing by smoke detection. Transoms and openings other than doors from corridors to rooms shall comply with this code or shall be covered with a minimum of 3/4-inch plywood or 1/2-inch gypsum wallboard or equivalent material on the room side. Exception: Existing corridor walls, ceilings, and opening protection not in compliance with the above may be continued when such buildings are protected with an approved automatic sprinkler system throughout. Such sprinkler system may be supplied from the domestic water system if it is of adequate volume and pressure."

(16) through (18) remain the same.

(19) Subsection ~~2902.6, Public Facilities~~ 2902.4, Required Public Toilet Facilities, is deleted in its entirety.

~~(20) Subsection 3004.3, Area of Vents, is modified by adding the following: "When energy conservation requires that the vents be normally closed, automatic venting by actuation of an elevator lobby detector or power failure may be accepted. When hoistway pressurization is used, venting upon power failure may be accepted. In either case, a manual override shall be provided."~~

(21) through (24) remain the same but are renumbered (20) through (23).

~~(25)~~ (24) The building official may waive minor building code violations that do not constitute an imminent threat to property or to the health, safety, or welfare of any person.

(26) through (28) remain the same but are renumbered (25) through (27).

~~(29)~~ (28) A private storage structure is a building ~~used only~~:

(a) used for storage of personal effects of the owner only; and

(b) ~~is not used for storage of items relating to any for profit or nonprofit venture which intends or contemplates any transfer or exchange of the stored items.~~
; and

(c) not used for storage of equipment, vehicles, materials, supplies, or products used in connection with a business.

(30) remains the same but is renumbered (29).

~~(31)~~ (30) Upon the effective date of new requirements, administrative rules, and/or adoption of new editions of model codes, any building or project for which a legal building permit has been issued shall not be required to meet the new requirements. If the building or project is subsequently altered or remodeled, the alteration or remodel shall be subject to the applicable requirements in effect at the time of permit issuance for the new work. On a case-by-case basis, the building official shall have the discretion to determine if the process for issuance of a legal permit was substantially complete enough to warrant the exemption of the project or building from the new requirements, rules, or code provisions.

(32) through (36) remain the same but are renumbered (31) through (35).

~~(37)~~ (36) Section 50-60-102~~(1)~~(a), MCA, exempts certain buildings from application of the state building codes. Provisions of the International Building Code shall not be applied in determining whether a building or structure is exempt from the state building codes. For example, fire walls as described in Section 705 of the International Building Code shall not be used to separate buildings otherwise covered by the state building codes into smaller buildings that would, if alone, be exempted by 50-60-102~~(1)~~(a), MCA.

~~(38)~~ (37) The exemptions in 50-60-102~~(1)~~(a), MCA, do not apply to any building used as or in conjunction with a hotel, motel, inn, motor court, guest or dude ranch, tourist home, public lodging house, youth camp, church camp, dormitory, youth living quarters, adult prerelease centers, bed and breakfast establishment, or other places where sleeping accommodations are furnished for a fee to a transient guest. "Transient guest" means a guest staying at one location for 30 days or less.

AUTH: 50-60-203, MCA

IMP: 50-60-101, 50-60-102, 50-60-104, 50-60-201, 50-60-203, 50-60-205,
MCA

REASON: It is reasonably necessary to amend (15) and (19) to reflect formatting changes in the IBC resulting in different numbering and renaming of the referenced IBC subsections. Section (20) is being deleted as redundant and unnecessary as the provision is now found in the incorporated 2006 edition of the IBC. Section (28) is being amended to address applicant and customer confusion by clarifying that private storage structures are not those used for storage of business items or items relating to either for-profit or nonprofit ventures.

24.301.154 INCORPORATION BY REFERENCE OF INTERNATIONAL RESIDENTIAL CODE

(1) The International Residential Code (IRC) is a nationally recognized model code setting forth minimum standards and requirements for detached one or two family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade in height, and their accessory structures. The IRC also provides a framework for program administration.

(2) The Department of Labor and Industry adopts and incorporates by reference the International Residential Code, ~~2003~~ 2006 Edition, referred to as the International Residential Code or IRC.

(3) Chapters 11 through ~~43~~ 42, inclusive, are deleted in their entirety.

(4) Subsection R301.6, Roof Load, is deleted and replaced with the following: "Snow loads shall be determined by the building official. In areas of the state outside of certified city, county, or town jurisdictions, the design snow load shall be based on the ground snow loads developed in "Snow Loads for Structural Design in Montana", ~~authored by F.F. Videon and J.P. Schilke, Civil & Agricultural Engineering Department, Montana State University, August 1989~~ 2004 revised edition. The minimum design roof snow load after allowed reductions shall be 30 psf unless justified by a Montana licensed design professional to the satisfaction of the building official. ~~Note: Other coefficients~~ Coefficients and factors other than those specified in the building code may be used when justified by a Montana licensed design professional to the satisfaction of the building official."

(5) Subsection R311.5.3.1, Riser Height, is amended to allow a maximum riser height of 8 1/4 inches.

(6) remains the same.

~~(7) Subsection R311.5.4, Landings for Stairways, is amended by adding an exception to read as follows: "Exception: A floor or landing is not required at the top of an interior flight of stairs, including stairs in an enclosed garage, provided a door does not swing over the stairs."~~

~~(8) Subsection R312.1, Guards Required, is amended in the first paragraph to read as follows: "Porches, balconies, ramps or raised floor surfaces located more than 30 inches (762 mm) above the floor or grade below shall have guards not less than 36 inches (914 mm) in height. Open sides of stairs with a total rise of more than 30 inches (762 mm) above the floor or grade below shall have guards not less than 34 inches (864 mm) in height measured vertically from the nosing of the treads."~~

(9) through (11) remain the same but are renumbered (7) through (9).

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-201, 50-60-203, MCA

REASON: There exists reasonable necessity to amend (1) of this rule to clarify the IRC's applicability to dwellings of not more than three above-grade stories in height. This language has been changed in the current IRC and is being amended here to comply with those changes. Section (3) is being amended to include chapter 43 in the department's adoption of the IRC. The department had erroneously deleted chapter 43 which refers to other codebooks or standards that define how IRC

requirements should be followed. This omission of chapter 43 can cause problems when the IRC directs the user to a referenced standard not adopted by the department. Section (4) is being amended to coincide with the correct reference to this same publication found in ARM 24.301.146(16). It is reasonably necessary to amend (5) to correct a previous typographical error. Sections (7) and (8) are being deleted as redundant and unnecessary as these provisions are now found in the incorporated 2006 edition of the IRC.

24.301.171 INCORPORATION BY REFERENCE OF INTERNATIONAL EXISTING BUILDING CODE (1) The Department of Labor and Industry adopts and incorporates by reference the International Existing Building Code (IEBC), 2003 2006 Edition, which may be used as an alternate prescriptive method(s) for the remodel, repair, alteration, change of occupancy, addition, and relocation of existing building.

(a) through (4) remain the same.

AUTH: 50-60-203, MCA

IMP: 50-60-103, 50-60-109, 50-60-201, MCA

24.301.172 INCORPORATION BY REFERENCE OF INTERNATIONAL MECHANICAL CODE (1) The Department of Labor and Industry adopts and incorporates by reference the ~~international code council's~~ International Mechanical Code, 2003 2006 Edition, published by the International Code Council, ~~referred to as the International Mechanical Code~~, unless another edition is specifically stated, together with the following amendments:

(a) through (1)(e) remain the same.

(f) Subsection 506.3.3.1, Grease duct test, is amended as follows for use only by the department: "Prior to the use of concealment of any portion of a grease duct system, a leakage test shall be performed by the installer. Installer shall provide documentation to the department of satisfactory test results. Ducts shall be considered to be concealed where installed in shafts or covered by coatings or wraps that prevent the ductwork from being visually inspected on all sides. The permit holder shall be responsible to provide the necessary equipment and perform the grease duct leakage test. A light test or an approved equivalent test method shall be performed to determine that all welded and brazed joints are liquid tight. A light test shall be performed by passing a lamp having a power rating of not less than 100 watts through the entire section of duct work to be tested. The lamp shall be open so as to emit light equally in all directions perpendicular to the duct walls. A test shall be performed for the entire duct system, including the hood-to-duct connection. The ductwork shall be permitted to be tested in sections, provided that every joint is tested."

(f) remains the same but is renumbered (g).

(2) and (3) remain the same.

(4) The purpose of this code is to provide minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation, and

maintenance of heating, ventilating, cooling, refrigeration systems, incinerators, and other miscellaneous heat-producing appliances.

(5) and (6) remain the same.

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-103, 50-60-109, 50-60-201, 50-60-303, MCA

REASON: It is reasonably necessary to amend (1)(f) to modify subsection 506.3.3.1 in the 2006 Edition of the International Mechanical Code (IMC). This subsection as found in the IMC requires that a building official witness the grease duct test. The department does not have sufficient inspection personnel to physically witness each test done in the department's jurisdiction. The subsection, as found in the 2006 IMC, has been left as is, for use by city, county, or town building departments, and is being amended here for use only by the department.

24.301.173 INCORPORATION BY REFERENCE OF INTERNATIONAL FUEL GAS CODE (1) The Department of Labor and Industry adopts and incorporates by reference the ~~International Code Council's~~ International Fuel Gas Code, ~~2003~~ 2006 Edition, published by the International Code Council, referred to as the International Fuel Gas Code, unless another edition is specifically stated, together with the following amendments:

(a) remains the same.

(b) The permit fees for the fuel gas code are calculated the same way as provided in ARM 24.301.172(1)(e), and substituting the fuel gas system for the mechanical system. The inspection fees for the fuel gas code are the same as provided in ARM 24.301.172(1)(e).

(c) Section 108 of the International Fuel Gas Code will be left as is for use by certified cities, counties, and towns. The department will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution, in lieu of Section 108. When a person fails to submit required plans, obtain a permit, correct plans, or comply with an order of the department, the department will, as authorized by 50-60-109, MCA, seek injunctive relief.

(d) through (3) remain the same.

(4) The purpose of this code is to provide minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation, and maintenance of heating, ventilating, cooling, refrigeration systems, incinerators, and other miscellaneous heat-producing appliances.

(5) and (6) remain the same.

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-103, 50-60-109, 50-60-201, 50-60-303, MCA

24.301.208 AUDIT INCORPORATION BY REFERENCE OF INDEPENDENT ACCOUNTANT'S REPORTING FORMAT FOR APPLYING AGREED-UPON PROCEDURES DURING AUDITS OF CERTIFIED CITY, COUNTY, OR TOWN BUILDING CODE ENFORCEMENT PROGRAMS (1) The Department of Labor and

Industry adopts and incorporates by reference a document entitled: "Independent Accountant's Reporting Format for Applying Agreed-Upon Procedures During Audits of Certified City, County, or Town Building Code Enforcement Programs, 2006 Edition."

(2) For purposes of reporting direct charges against a building code enforcement program in an agreed-upon procedures audit, time and motion or cost allocation studies will not be acceptable as a basis to support direct charges.

(4) (3) A city, county, or town with a certified building code enforcement program that had a building code program reserve fund balance in the preceding fiscal year in excess of \$10,000 and had building permit revenues in the previous fiscal year of more than \$10,000 shall require its independent auditor, in conjunction with the audit required by 2-7-503, MCA, to perform agreed-upon procedures to determine whether the city, county, or town has complied with the financial related statutes and administrative rules relating to city, county, or town building code enforcement programs. The department may require cities, counties, and towns with certified building code enforcement programs which do not meet the above criteria to provide such an audit on a case-by-case basis so the department can ensure program functions are being properly performed as required by 50-60-302(2), MCA. The agreed-upon procedures engagement must be performed and reported in accordance with standards prescribed by the American Institute of Certified Public Accountants. The engagement must include, but is not limited to, procedures necessary to determine that all construction-related fees or charges imposed and collected by the city, county, or town building code enforcement program are used and accounted for as provided in 50-60-106(2)(f), MCA, and ARM 24.301.203. provide the information necessary to fully and accurately satisfy the reporting format adopted by reference in (1), as provided for in 50-60-106, MCA, and ARM 24.301.203. Use of this reporting format will become mandatory beginning on July 1, 2007, and will apply to any independent agreed-upon procedures audit performed after that date.

(4) A copy of the document identified in (1) may be obtained from the Department of Labor and Industry, Bureau of Building and Measurement Standards, P.O. Box 200517, 301 South Park, Helena, MT 59620-0517. Copies may also be obtained by facsimile request sent to Certified City Program at (406) 841-2050, by e-mail request sent to bsdbcb@state.mt.us, or by downloading the document from the department's web site at www.buildingcodes.mt.gov.

(2) and (3) remain the same but are renumbered (5) and (6).

AUTH: 50-60-203, 50-60-302, MCA

IMP: 50-60-302, MCA

REASON: The department determined it is reasonable and necessary to amend this rule and standardize the data that must be examined during the agreed-upon procedures audit, as mandated for certain certified Montana code enforcement programs. The department has concluded that the type of information provided to the department by the agreed-upon procedures engagements varies widely among certified programs across the state. Consequently, many of those jurisdictions do not include sufficient requirements to provide that data when they engage private

auditing firms to complete their agreed-upon procedures engagements. When the department receives incomplete agreed-upon procedures reports, additional time is needed to request further information, and the responding jurisdictions must also spend additional time or reengage the audit firms in order to provide it. By adopting a specific document to guide the agreed-upon procedures process, the department concluded that the audit process for certified code enforcement programs will become more efficient and economical for all participants.

The department has worked closely with the Local Government Services Bureau of the Department of Administration to develop the document proposed for adoption by reference in (1). This bureau is charged by law with reviewing audit reports of local governments throughout the state after statutorily mandated audits have been conducted by private auditing firms as required by 2-7-503, MCA. By involving this sister agency in developing the document to be adopted in (1), the department reasonably believes that both the auditing firms and the certified jurisdictions that engage them will benefit significantly through a clear understanding of the agreed-upon procedures and reporting requirements necessary to fully inform the department's review of agreed-upon procedures audits. The cost of the agreed-upon procedures engagement shall be paid by the city, county, or town, but may be considered a direct cost of the code enforcement program.

It is reasonable and necessary to no longer accept time and motion or cost allocation studies as acceptable bases in support of direct charges against building code enforcement programs' fee-based revenue. Following department review of audit reports based upon these kinds of studies, the department concluded that program costs cannot be adequately verified as justification for the fees being charged unless all direct charges are traceable to provision of various specific services to the certified programs. Since the use of figures obtained through time and motion or cost allocation studies makes it impossible to determine specifically what the program is paying for, the department's ability to supervise certified building code programs responsibly is also diminished and therefore, such studies will no longer be accepted in support of direct charges.

Once adopted, the department will not enforce this rule until July 1, 2007, the beginning of fiscal year 2008, and will apply to all independent audits performed for fiscal year 2007 and thereafter. The department concluded that allowing additional time to enforce this rule will provide sufficient time to affected certified jurisdictions to make necessary adjustments to their respective accounting procedures.

24.301.301 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) The Department of Labor and Industry adopts and incorporates by reference the Uniform Plumbing Code, ~~2003~~ 2006 Edition, referred to as the Uniform Plumbing Code, unless another edition is specifically stated, together with the following appendix chapters and amendments:

(a) through (c) remain the same.

~~(d) Appendix H, Recommended Procedures for Design, Construction and Installation of Commercial Kitchen Grease Interceptors is adopted.~~

(e) remains the same but is renumbered (d).

~~(f)~~ (e) Subsections 102.3, 103.1, 103.2, 103.3, 103.4, 103.5, and 103.6 will be left as is for use by local governments (i.e., municipalities and counties) but will

not be used by the department and the state of Montana. For the purposes of enforcement by the department, these subsections are replaced with provisions of Title 50, chapter 60, part 5, MCA.

(i) through (iv) remain the same.

~~(g)~~ (f) Delete Table No. 1.1 - PLUMBING PERMIT FEES and replace with the following schedule:

-- <u>(i)</u> for issuing each permit	\$20*
-- <u>(ii)</u> for each plumbing fixture	7
-- <u>(iii)</u> water service - domestic or commercial	7
-- <u>(iv)</u> for each building sewer and each trailer park sewer	11
-- <u>(v)</u> storm drains and storm drainage	7
-- <u>(vi)</u> for each water heater	7
-- <u>(vii)</u> for each industrial water pretreatment interceptor, including its tray and vent, excepting kitchen type grease interceptors functioning as fixture traps	7
-- <u>(viii)</u> for installation, alteration, or repair of water piping and/or water treatment equipment	7
-- <u>(ix)</u> for repair or alteration of drainage or vent piping	7
-- <u>(x)</u> for each lawn sprinkler system and fire protection system or any one meter, including backflow protection devices therefore	7
-- <u>(xi)</u> for vacuum breakers or backflow protective devices on tanks, vats, etc., or for installation on unprotected plumbing fixtures, including necessary water piping	
-- <u>(A)</u> one to four	7
-- <u>(B)</u> five or more, each	2
-- <u>(xii)</u> requested plumbing inspection fee (provided that such service is not in excess of one hour in duration, and then \$25 for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the state of Montana's existing rate for these items)	45
-- <u>(xiii)</u> reinspection (provided the \$30 does not exceed the original permit fee, in which case the original fee will be charged)	30
-- <u>(xiv)</u> for each gas piping system of one to four outlets	7
-- <u>(xv)</u> for each gas piping system of five or more, per outlet	2
-- <u>(xvi)</u> for each medical gas piping system serving one to five inlet(s)/outlet(s) for a specific gas	50
-- <u>(xvii)</u> for each additional medical gas piping inlet(s)/outlet(s)	5

*except for replacement of water heaters.

~~(h)~~ (g) Section 218, Definition of Plumbing System, is amended to read:
"Includes all potable water supply and distribution pipes, all plumbing fixtures and traps, all drainage and vent pipes, building drains and building sewers, including their respective joints and connections, devices, receptacles, and appurtenances within the property line of any premises, and includes water heaters and vents for the premises."

~~(f)~~ (h) Subsection 6-2 405.2, Prohibited Urinals, is amended by adding the following: "Exception: Nonwater supplied urinals may be installed and shall be maintained in accordance with manufacturer's installation instructions and required maintenance schedule. A properly sized drain, vent, and water supply line, permanently capped, shall be installed for future use in the event the owner decides or is ordered to replace the nonwater supplied urinal with a water supplied urinal."

~~(j)~~ (i) Table 4-1, Minimum Plumbing Facilities, is deleted and replaced with ARM 24.301.351, Minimum Required Plumbing Fixtures.

~~(k)~~ (j) Subsection 508.14, paragraph one is amended to read as follows: "Gas utilization equipment, or any equipment that generates a glow, spark, or flame, in residential garages and in adjacent spaces that open to the garage and are not part of the living space for a dwelling unit shall be installed so that all burners, burner-ignition devices, and heating elements are located not less than 18 ~~in.~~ inches (450 mm) above the floor unless listed as flammable vapor ignition resistant."

(l) remains the same but is renumbered (k).

~~(m)~~ Subsection 603.4.4.1, is amended with the addition of the following language: ~~Heat exchangers, in single family dwellings on their own private well, which utilize a nontoxic transfer fluid, may be of single wall construction.~~

(l) Subsection 603.1, Approval of Devices or Assemblies, is amended to read as follows: "Before any device or assembly is installed for the prevention of backflow, it shall have first been approved by the authority having jurisdiction. Devices or assemblies shall be tested for conformity with recognized standards or other standards acceptable to the authority having jurisdiction, so long as those standards are consistent with the intent of this code. All devices or assemblies installed in a potable water supply system for protection against backflow shall be maintained in good working condition by the person or persons having control of such devices or assemblies. If found to be defective or inoperative, the device or assembly shall be repaired or replaced. No device or assembly shall be removed from use or relocated or other device or assembly substituted, without the approval of the authority having jurisdiction."

~~(n)~~ (m) Subsection 603.4.44 10, is amended with the addition of the following language: "Boiler feed lines, in single family dwellings on their own private well, may be protected with a dual check valve with intermediate atmospheric vent when a nontoxic transfer fluid is utilized in the boiler."

~~(o)~~ (n) Subsection 604.1, Materials, is amended to read as follows:

(i) "Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron, galvanized steel, or other approved materials."

(ii) and (iii) remain the same.

~~(iv) PB, CPVC, PEX or PEX-AL-PEX water pipe and tubing may be used for hot and cold water distribution systems within a building.~~

(v) remains the same but is renumbered (iv).

(v) Table 6-4 is amended to add the following: "PB is allowed for hot and cold water distribution."

(p) through (u) remain the same but are renumbered (o) through (t).

~~(v)~~ (u) Subsection 710.1, is amended to read as follows: ~~Drainage piping serving fixtures which have flood level rims located below the elevation of~~ "Where a

fixture is installed on a floor level that is lower than the next upstream manhole cover of the public or private sewer serving such drainage piping may be protected from the backflow of sewage by installing an approved type backwater valve. Fixtures on floor levels above such elevation shall not discharge through the backwater valve."

(w) remains the same but is renumbered (v).

(w) Subsection 903.2.1 is amended to read as follows: "Copper tube for underground drainage and vent piping shall have a weight of not less than that of copper tube Type L."

(x) through (ad) remain the same.

(ae) Chapter 13, Health Care Facilities and Medical Gas and Vacuum Systems, is deleted. In lieu of Chapter 13, the Department of Labor and Industry adopts and incorporates by reference the National Fire Protection Association's Standard NFPA 99C, Gas and Vacuum Systems, ~~2002~~ 2005 Edition, referred to as NFPA 99C, unless a different edition date is specifically stated, as the standard for the installation of medical gas and vacuum systems. The requirements of this rule shall not be construed as to replace or supersede any additional requirements for testing and certification of medical gas and vacuum systems, including independent third party certification of systems, as may be applicable. NFPA 99C is a nationally recognized standard setting forth minimum standards and requirements for medical gas and vacuum systems. A copy of NFPA 99C may be obtained from the National Fire Protection Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

(2) The purpose of this code is to provide minimum requirements and standards for plumbing installations for the protection of the public health, safety, and welfare. The Uniform Plumbing Code is a nationally recognized model code setting forth minimum standards and requirements for plumbing installations. A copy of the Uniform Plumbing Code may be obtained from the Department of Labor and Industry, Bureau of Building and Measurement Standards, P.O. Box 200517, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Association of Plumbing and Mechanical Officials, 20001 South Walnut Drive, Walnut, CA 91789.

AUTH: 50-60-203, 50-60-504, 50-60-508, MCA

IMP: 50-60-201, 50-60-203, 50-60-504, 50-60-508, MCA

REASON: It is reasonably necessary to make the following amendments to (1) of this rule:

- (d) is being deleted as the information is now included in the main body of chapter 10 of the adopted 2006 Edition of the Uniform Plumbing Code (UPC).
- (m) is being deleted because the 2006 UPC now allows the use of single wall heat exchangers in subsection 506.4.
- (l) is being added to this rule amending subsection 603.1 of the UPC. A portion of the text was deleted from this subsection to remove the annual testing requirement for backflow prevention devices and assemblies, as Montana does not have a backflow prevention testing law.
- (m) is being amended to reference the correct subsection in the 2006 UPC.
- (n)(iv) is being deleted as all of the piping types listed are now found in table

6-4 of the 2006 UPC except for PB. Subsection (n)(v) is being modified to add PB pipe to table 6-4 as it is not included in the 2006 Edition of the UPC.

-- (u) is being modified to include new wording as found in the 2006 edition of the UPC.

-- (w) is being added to address confusion regarding the usage of Type L copper piping. Type L copper pipe is a heavier than required pipe which holds up better in Montana's colder climate where piping has to be buried deeper than in many other states. Subsection (1)(r) allows for the use of Type L copper piping for underground drainage and this amendment will make the requirements consistent for using copper piping for underground vents.

24.301.602 INCORPORATION BY REFERENCE OF ELEVATOR CODE

(1) The Department of Labor and Industry, referred to as department, adopts and incorporates by reference:

(a) Safety Code for Elevators and Escalators, ASME A17.1 ~~2000~~ 2004, A17.1a-2005 Addenda, and ASMEA17.1S-2005 Supplement;

(b) Safety Code for Existing Elevators and Escalators, ASME A17.3 2002;

(c) Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1-~~1999~~ 2003 and A18.1a-~~2001~~ Addenda; and

(d) ASME A17.1 ~~2000~~ 2004, Appendix N, Table N1, Recommended Inspection and Test Intervals in Months, for required testing intervals. This table is to be used for testing interval requirements only. Inspection intervals are to be performed as specified in 50-60-711, MCA.

(i) remains the same.

(2) The purpose of the elevator code is to provide safety standards for the design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of permanently installed hoisting and lowering mechanisms.

(a) through (b)(iv) remain the same.

(v) cranes, derricks, hoist, hooks, jacks, and slings;

(vi) through (xi) remain the same.

(3) Inspection, code compliance, and enforcement of hoistway (shaft) standards is the responsibility of the appropriate authority having jurisdiction for inspection and enforcement of the building code.

(4) remains the same.

AUTH: 50-60-203, 50-60-705, 50-60-715, MCA

IMP: 50-60-201, 50-60-704, 50-60-705, 50-60-715, MCA

24.301.710 INCORPORATION BY REFERENCE OF BOILER AND PRESSURE VESSEL CODE (1) The Department of Labor and Industry, referred to as department in this and all subsequent rules, adopts and incorporates by reference ~~herein~~ the following sections of the American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code, ~~2004~~ 2004 Edition, referred to as Boiler and Pressure Vessel Code unless another edition is specifically stated:

(a) remains the same.

(b) Section II, Parts A, B, C, and D, Material Specifications;

(c) through (2) remain the same.

(3) The Boiler and Pressure Vessel Code and CSD-1 are nationally recognized codes setting forth minimum standards and requirements for the construction, operation, and safety of boilers. A copy of the Boiler and Pressure Vessel Code and CSD-1 may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017.

(4) The department adopts and incorporates by reference, the National Board of Boiler and Pressure Vessel Inspectors, National Board Inspection Code (NBIC), 2004 Edition.

(5) The NBIC is a nationally recognized inspection manual which establishes basic boiler safety inspection procedures. A copy of the NBIC may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183.

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, 50-74-101, MCA

REASON: Reasonable necessity exists to amend this rule to adopt the National Board Inspection Code (NBIC). The NBIC is already referenced in chapter 7 of the ASME Boiler Code and has been used by department inspectors since 2001. The department is now formally adopting this code simply to avoid any confusion. The purpose of the NBIC is to maintain the integrity of pressure retaining items after they have been placed into service by providing rules for inspection, repair, and alteration, thereby ensuring that these objects may continue to be safely used. The NBIC serves as a guide to department inspectors for use in conducting inspections.

24.301.714 FEES (1) remains the same.

(a) operating certificate	\$26 <u>31</u>
(b) internal inspection	75
(c) external inspection:	
(i) hot water heating and supply	30 <u>35</u>
(ii) steam heating	40 <u>50</u>
(iii) power boiler	55 <u>70</u>
(d) special inspection	50 per hour plus expenses

(2) The owner and/or user of a boiler, inspected by a special boiler inspector and insured by an insurance company, shall, within ten days of receipt of notification from the department, remit the operating certificate fee, as outlined in (1)(a) ~~above~~, to obtain a boiler operating certificate from the department.

(3) and (4) remain the same.

(5) The fee schedule established in (1) ~~above~~ is repeated from 50-74-219, MCA, for the convenience of boiler owners and users.

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, 50-74-219, MCA

REASON: The 2005 Montana Legislature enacted Chapter 68, Laws of 2005 (House Bill 160), an act increasing boiler inspection and certification fees collected by the department. The bill was signed by the Governor and became effective on

March 24, 2005, and the increased fees are codified at 50-74-219, MCA. The fees shown in statute are repeated in this rule for the convenience of boiler owners and users. Therefore, it is reasonably necessary to amend this rule to remain consistent with the increased fees found in statute.

24.301.717 INSURANCE COMPANY TO PROVIDE WRITTEN NOTIFICATION TO THE DEPARTMENT OF CHANGE IN BOILER STATUS

(1) through (1)(c) remain the same.

(d) boiler with insurance suspended; or

(e) remains the same.

(2) The written notification of boiler status, referenced in (1) ~~above~~, shall be filed with the department within ~~30~~ 15 working days of the change in boiler status and shall include all applicable boiler information (boiler identification number or stamp, owner, location, operating certificate number, etc.).

(3) remains the same.

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, 50-74-202, MCA

REASON: It is reasonably necessary to amend this rule and require insurers to notify the department within 15 days of a change in a boiler's insured status. If the department is not timely notified when an insurer initiates or terminates boiler accounts, duplicate inspections may occur or required inspections may not be performed within the time mandated by law. Such inefficiencies and additional duplicate costs will be avoided by requiring more timely department notification.

24.301.718 BOILER INSPECTIONS (1) through (1)(e) remain the same.

(i) Boiler inspection reports shall be filed with the department within ~~30~~ 15 working days after inspection on forms acceptable to the department. Such report shall indicate the boiler has been approved for operation by ~~the~~ a special boiler inspector employed by the insurance company that insures the boiler.

(ii) The department may inspect any boiler, which is also inspected by a special boiler inspector employed by an insurance company. Whenever the department inspection confirms that the insurance company inspection report is substantially and materially incomplete, invalid, or unacceptable, the department may assess the insurance company the fee for a special inspection as imposed by ARM 24.301.714(1)(d).

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, 50-74-206, 50-74-209, MCA

REASON: It is reasonably necessary to amend this rule to ensure that department boiler inspection records are accurate. The department continuously reviews boiler inspection records to ascertain if they are inspected in a timely manner. If insurance inspectors do not submit timely inspection reports and the department's records show that a boiler is past due for inspection, a state boiler inspector will perform the inspection. The department is aware of instances when both the state and the

insurance inspectors inspected a boiler because the state had not yet received the insurance inspector's report. In these cases the customer was required to pay for both inspections, even though only one was required. By amending this rule to require insurance inspectors' submit reports within 15 days of inspection, the number of duplicate inspections will be reduced or eliminated.

24.301.719 ASSIGNMENT OF STATE IDENTIFICATION NUMBER

~~(1) At the time of the initial boiler inspection, the state boiler inspector or special boiler inspector will assign and apply to the boiler a state identification number as directed by the department.~~ Inspections of boilers without a state identification number shall be performed by either of the following methods:

(a) by the special boiler inspector who shall notify the appropriate state boiler inspector of the boiler location. The state boiler inspector shall assign a state identification number and may perform a formal inspection on that boiler. The state inspection will be billed to the customer as per 50-74-219, MCA. The special boiler inspector shall submit the initial inspection report to the state with statements of conditions or violations; or

(b) by the state boiler inspector who shall apply the state identification number and perform a formal inspection on that boiler. The state inspection will be billed to the customer as per 50-74-219, MCA.

(2) Each steel boiler will be stamped by the inspector, utilizing letters and figures not less than 5/16" inches in height and arranged as follows: MTB 00000.

(3) and (4) remain the same.

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, 50-74-102, 50-74-206, 50-74-219, MCA

REASON: It is reasonably necessary to amend this rule so that only the department assigns numbers to boilers in the state. Under current rule, all insurance inspectors are issued a series of numbers to use in numbering boilers not yet in the state boiler inspection records. Over the years there have been many instances of the same number being issued to two different boilers or the wrong number being reported by the insurance inspector for a particular boiler. By maintaining the numbering system exclusively within the department, the instance of improperly applied numbers will be reduced or eliminated. The department notes that most other western states maintain their numbering system in a similar manner. The department is implementing a quality control program to monitor initial inspections by special inspectors. Research shows that special inspectors inspect 48 percent of all boilers in Montana but cite less than 15 percent of boiler code violations. This rule will allow the department to more closely monitor the work of special inspectors and help ensure that boilers added to the inspection program are code compliant. The implementation cites are being amended to accurately reflect all statutes implemented through this rule.

5. The new rule proposed to be adopted provides as follows:

NEW RULE I DEFINITIONS For the purposes of this chapter, the following definitions shall apply:

(1) "State Electrical Code" means the edition of the National Electrical Code or any other model electrical code, which is adopted, and as it may be modified by the department for use as a construction standard in and by Montana's electrical industry.

AUTH: 50-60-603, MCA

IMP: 50-60-603, MCA

REASON: It is reasonably necessary to adopt the definition of "State Electrical Code" as defined by the State Electrical Board to ensure the department is consistent in its use of the term. Consistent use of the term will lessen confusion and inquiries among applicants and customers.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jim McGimpsey, Lead Supervisor, Bureau of Building and Measurement Standards, P.O. Box 200517, Helena, Montana 59620-0571, by facsimile to (406) 841-2050, or by e-mail to JMcGimpsey@mt.gov, and must be received no later than 5:00 p.m., November 13, 2006.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at <http://www.buildingcodes.mt.gov>. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockett St., room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Labor and Industry.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

10. The Department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 25, 2006